

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 12, 2007 Session

**RICARDO RAMSEY v. STATE OF TENNESSEE
AND MURFREESBORO POLICE DEPARTMENT**

**Appeal from the Chancery Court for Davidson County
No. D5583 Claudia Bonnnyman, Chancellor**

No. M2006-01172-COA-R3-CV - Filed on April 26, 2007

This is an appeal of the trial court's order upholding the Department of Safety's vehicle forfeiture under Tenn. Code Ann. § 53-11-451 for transporting drugs, where the owner failed to timely file a claim or request a hearing. Failure of the owner to file a claim within the 30 day period is grounds to uphold the forfeiture. We affirm the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., JJ., joined.

Radford H. Dimmick, Nashville, Tennessee, for the appellant, Ricardo Ramsey.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, Lizabeth A. Hale, Assistant Attorney General, for the appellees, State of Tennessee and Murfreesboro Police Department.

MEMORANDUM OPINION¹

I. FACTS

Mr. Ramsey owned a 1998 Lincoln Navigator which was seized by the Murfreesboro Police Department on September 23, 2004, following a search that revealed illegal drugs and paraphernalia. However, the criminal charges against Mr. Ramsey were later dismissed because the court held that the drugs could not be introduced into evidence.

On September 23, 2004, Mr. Ramsey received a Notice of Seizure and Forfeiture of Conveyances. This notified Mr. Ramsey that the car was seized pursuant to Tenn. Code Ann. § 53-11-451 upon reasonable belief the car was being used to transport contraband goods. Further, Mr. Ramsey was informed that unless he filed a claim with the Department of Safety within 30 days after notice that a forfeiture warrant had been issued, then the car would be forfeited and subject to public sale. The notice explained that the claim must be in writing, stating his interest in the seized car, requesting a hearing under Tenn. Code Ann. § 40-33-201 *et seq.*, and accompanied by a bond.

A forfeiture warrant was issued for the Lincoln Navigator on September 27, 2004. The warrant provided that the vehicle was subject to forfeiture under Tenn. Code Ann. § 53-11-451(a)(4) as a vehicle which was used to transport drugs in violation of the law. The affidavit in support of the forfeiture warrant was signed by Detective John Jones. According to the affidavit, Mr. Ramsey was the owner and driver of the Lincoln Navigator. The affidavit further provided that crack cocaine, marijuana, and Valium were found in the car's center console, that Mr. Ramsey admitted transporting known drug traffickers to drug deals in the Lincoln, and that Mr. Ramsey was in the possession of a used crack pipe.

On October 21, 2004, Mr. Ramsey signed a certified mail receipt evidencing receipt of a letter informing him that a forfeiture warrant had been issued. This letter reiterated the procedure to file a claim for the car and that failure to do so would result in forfeiture of the car. The letter also stated: "Failure to properly request such a hearing in a timely manner acts as a waiver of any interest you might have in the seized property."

An Order of Forfeiture was entered by the Department of Safety on November 29, 2004. Mr. Ramsey's request for a hearing was received by the Department on the next day, November 30,

¹Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

2004.² After his request for reconsideration was denied, Mr. Ramsey requested judicial review of the forfeiture. The trial court found no reason to disturb the order of forfeiture, and Mr. Ramsey appeals.

On appeal, Mr. Ramsey asks the court to disregard his failure to timely ask for a hearing and to remand the matter back to the Department for a hearing. Alternatively, Mr. Ramsey argues that the forfeiture was deficient since it must be accompanied by proof that Mr. Ramsey knew or gave consent for the drugs in the vehicle.

II. ANALYSIS

The pertinent parts of the forfeiture statute in question, Tenn. Code Ann. § 53-11-451, are as follows:

(A) The following are subject to forfeiture:

...

(4) All conveyances, including aircraft, vehicles or vessels that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (2), but:

...

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without such owner's knowledge or consent.

Pursuant to Tenn. Code Ann. § 40-33-206, any person asserting a claim to the property may "within 30 days of being notified by the applicable agency that a forfeiture warrant has issued," file a claim requesting a hearing.³ The consequence of failure to comply with this requirement is quite clear:

If a claim . . . is not filed with the applicable agency within the time specified by this part, the seized property shall be forfeited and disposed of as provided by law.

Tenn. Code Ann. § 40-33-206(c).

²Delivery to the Department was not delayed since the affidavit of indigence accompanying Mr. Ramsey's claim and request for a hearing is dated November 27, 2004.

³Tenn. Code Ann. § 40-33-206 applies to any forfeiture under Tenn. Code Ann. §§ 53-11-451. Tenn. Code Ann. § 40-33-201.

As a preliminary matter, we note that conviction of a crime is not a prerequisite to forfeiture. *Hargrove v. State*, M2004-00410-COA-R3-CV, 2005 WL 2240970 at *3 (Tenn. Ct. App. Sept. 15, 2005) (no Tenn. R. App. P. 11 application filed). Forfeiture is based on the commission of specified acts, not on a conviction.

We find Mr. Ramsey's failure to timely file a claim requesting a hearing is sufficient grounds to deny relief. There is no question that Mr. Ramsey was clearly informed twice of the procedure to object to the forfeiture, the time frame for doing so, and the consequence of failing to timely file a claim. The procedure described to Mr. Ramsey is that required by Tenn. Code Ann. § 40-33-206. It is undisputed that Mr. Ramsey failed to meet the 30 day deadline. Therefore, pursuant to Tenn. Code Ann. § 40-33-206(c), the vehicle was subject to forfeiture.

We also note that Mr. Ramsey argues that Tenn. Code Ann. § 53-11-451(a)(4)(B) requires that the car owner have knowledge of or give consent to the presence of drugs before a forfeiture may be ordered. According to Mr. Ramsey, on this point, the record is silent. This issue of the owner's knowledge could have been raised, heard, and decided by the Department if a hearing had been requested. Mr. Ramsey cannot now raise this factual issue in the courts and thereby circumvent the requirement for timely filing of a claim.⁴

The trial court is affirmed. Costs of this appeal are taxed to Ricardo Ramsey for which execution may issue if necessary.

PATRICIA J. COTTRELL, JUDGE

⁴In any event, the affidavit accompanying the forfeiture warrant established the elements of Tenn. Code Ann. § 53-11-451(a)(4)(B). The affidavit accompanying the forfeiture warrant states that drugs were in the console and Mr. Ramsey had a used crack pipe. Together with his admission about taking drug traffickers to drug deals, we think this constitutes evidence in the administrative record that Mr. Ramsey either knew or consented to the drugs in his car.